

KEVIN J. BLISS ET AL.

IBLA 84-210

Decided July 6, 1984

Appeal from a decision of the New Mexico State Office, Bureau of Land Management, rejecting competitive oil and gas lease bid. NM 58030.

Set aside and remanded.

1. Oil and Gas Leases: Competitive Leases -- Oil and Gas Leases:
Discretion to Lease

The Secretary of the Interior has the authority to reject a high bid in a competitive oil and gas lease sale where the record shows a rational basis for the conclusion that the amount of the bid was inadequate.

2. Oil and Gas Leases: Competitive Leases -- Oil and Gas Leases:
Discretion to Lease

Where a competitive oil and gas lease high bid is not clearly spurious or unreasonable on its face and the record fails to disclose a sufficient factual basis for the conclusion that the bid is inadequate, the decision will be set aside and the case remanded for compilation of a more complete record and readjudication of the bid. A record that does not reveal the presale evaluation for a parcel and sufficient factual data indicating the derivation of that value cannot support rejection of the high bid for the parcel.

APPEARANCES: Kevin J. Bliss for appellants.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Kevin J. Bliss, Raye P. Miller, and Wade White have appealed from a decision of the New Mexico State Office, Bureau of Land Management (BLM), dated November 29, 1983, rejecting their high bid for competitive oil and gas lease NM 58030. Appellants' bid was rejected, BLM stated, because its evaluation of parcel 14, the 40-acre tract sought by appellants, shows that their bid was less than the presale tract valuation. No data in support of this conclusion appears in the file.

A total of four bids was submitted for the tract at issue. Appellants bid was \$158.40 per acre; other bids were \$20.77, \$18.75, and \$2.10 per acre. The

The statement of reasons filed by appellants states that a dry hole drilled by Southland Royalty Corporation only 660 feet from parcel 14 seriously diminishes the value of parcel 14. Appellants further state that their bid was \$5,506 more than the next highest bidder and was over 750 percent of the next highest bid.

[1] The Secretary of the Interior has discretionary authority to reject a high bid for a competitive oil and gas lease as inadequate. 30 U.S.C. § 226(b) (1982); 43 CFR 3120.5. This Board has consistently upheld that authority so long as there is a rational basis for the conclusion that the highest bid does not represent the fair market value for the parcel. Harold R. Leeds, 60 IBLA 383 (1981); Harry Ptasynski, 48 IBLA 246 (1980); B. D. Price, 40 IBLA 85 (1979).

[2] The Secretary is entitled to rely on the reasoned analysis of the Department's technical experts in matters concerning geologic evaluation of tracts of land offered at a sale of competitive oil and gas leases. When BLM relies on that analysis in rejecting a bid as inadequate, it must ensure that a sufficient explanation is provided for the record to support the decision. Southern Union Exploration Co., 41 IBLA 81, 83 (1979). Otherwise, if the bid is not clearly spurious or unreasonable on its face, the Board has consistently held that the decision must be set aside and the case remanded for compilation of a more complete record and readjudication of the acceptability of the bid. Southern Union Exploration Co., *supra*; Charles E. Hinkle, 40 IBLA 250 (1979); Yates Petroleum Corp., 32 IBLA 196 (1977).

We are unable to determine the correctness of BLM's decision on the basis of the present record because the record does not reveal BLM's presale evaluation. The importance of this figure has been emphasized in numerous Board decisions. See, e.g., Viking Resources Corp., 77 IBLA 57 (1983); Larry White, 72 IBLA 242 (1983). There are a number of considerations which make disclosure of this estimate essential to the ability of the Board to discharge its appellate review functions. First, the absence of such estimate puts the Board in the position of reviewing the correctness of a BLM decision to reject a high bid on the ground that it is inadequate when it is impossible for this Board to determine if this is factually correct.

Our concern, here, is not purely hypothetical. Thus, in Stephen M. Bess, 71 IBLA 122 (1983), we noted that Minerals Management Service had mistakenly utilized a monthly production figure as a daily production figure in computing the values of adjacent wells, thereby distorting such production by a factor of 30. While we do not doubt that such purely mathematical mistakes are rare, the failure of BLM to submit the presale evaluation effectively removes the ability of the Board to discover such an error should it, in fact, exist.

A more general concern relates to the fact that recent adjudications clearly indicate that BLM will accept a high bid which is below BLM's presale estimates either where such a bid is relatively close to the presale estimate of value or where other factors indicate that the bid might reflect fair market value. Thus, in Amoco Production Co., 71 IBLA 241 (1983), we noted that while some high bids below the presale evaluation were rejected as showing

"only speculative interests," others were accepted because they were "substantial." The record in that case contained no consistent rationale to support such a distinction. ^{1/} In addition, BLM failed to disclose the estimated fair market value supporting factual data. For those reasons, we set aside the BLM decision and remanded that case for readjudication.

Accordingly, we must set aside BLM's decision of November 29, 1983, and remand this case to the State Office for readjudication of appellants' bid. We recognize that ultimately appellants must not merely show that the Government's estimate did not constitute fair market value, but they must also affirmatively show that their bid represented fair market value. Absent this letter showing the Board could not order issuance of an oil and gas lease to appellants. See Viking Resources Corp., 80 IBLA 245 (1984). But as we noted in Larry White, 81 IBLA 19 (1984), the burden of justifying their bid does not shift to appellants "in the absence of sufficient documentation of the Government's estimate such as would establish its prima facie correctness." Id. at 22 n.2. See also R. T. Nakaoka, 81 IBLA 197, 200 (1984). Such a prima facie case cannot be made in the absence of a disclosure of what the presale evaluation was. In readjudicating the bid, BLM should consider the arguments presented by appellants' statement of reasons. If their bid is rejected again, BLM shall set forth the reasons for doing so, including the presale evaluation, so that these reasons may be addressed by appellants and considered by the Board in the event of an appeal.

Pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the State Office is set aside and the case is remanded for action consistent herewith.

Bruce R. Harris

Administrative Judge

We concur

Franklin D. Arness

Administrative Judge

James L. Burski

Administrative Judge

^{1/} The present record contains a memorandum from the Acting Deputy State Director, Mineral Resources, dated Nov. 15, 1983, recommending acceptance of 15 parcels in the instant sale for which the high bids were less than the presale estimates of value. In recommending acceptance, the rationale given for various parcels was that they were a certain percentage of the presale valuation. In one case (parcel 38) a bid as low as 80 percent of presale valuation was recommended for acceptance.

